



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,892	02/27/2002	Bernhard Fischer	PHD 99,207	5207

7590 10/05/2004
Corporate Patent Counsel
Philips Electronics North America Corporation
580 White Plains Road
Tarrytown, NY 10591

EXAMINER

LAUCHMAN, LAYLA G

ART UNIT	PAPER NUMBER
----------	--------------

2877

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/069,892	Applicant(s) FISCHER, BERNHARD	
	Examiner L. G. Lauchman	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/09/2004.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-10 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Wagenen et al (4,784,486).

As to Claim 1, the patent '486 teaches a system for avoiding poisoning effects during anesthesia (col. 1, lines 14-17; col. 5, lines 1-15), comprising:

determining means (Fig. 2) for determining the quantitative amount of the anesthetic agent degradation product in an anesthetic gas mixture (col. 17, lines, 6-8, and 25-53, see the list of Gas Species of the preferred embodiment (line 31-34) in Table I) ;

alarm means for providing an alarm when the determined quantitative amount of the anesthetic agent degradation product in the anesthetic gas mixture exceeds a given threshold (col. 20, lines 26-46).

As to Claim 2, the patent '486 teaches everything as applied to Claim 1, and in addition: measuring means for measuring a Raman spectrum of the gas mixture and a processing unit for determining the quantitative amount of the anesthetic agent in the gas mixture by comparing the measured Raman spectrum with a reference spectrum of the anesthetic agent (see Col. 17, lines 6-8).

As to Claim 3, the patent '486 teaches everything as applied to Claim 1, wherein the anesthetic agent degradation product is carbon monoxide CO.

As to Claim 4, the patent '486 teaches everything as applied to Claim 1. The patent does not disclose trifluoromethane as the anesthetic agent degradation product, however it would be an inherent feature, because trifluoromethane is a break down product of desflurane, which form carbon monoxide by reacting with carbon dioxide absorbers (see attached article by Kronen). Therefore, if the system of claim 1 is able to detect CO, it is inherent to detect trifluoromethane, as an indicator of the presence of CO, since both gases are chemically and physically linked.

As to Claim 5, the patent '486 teaches a system, comprising :

means for measuring a Raman spectrum of the gas mixture (see Col. 17, lines 9-57);

a processing unit for determining the quantitative amount of at least one of the anesthetic agents degradation products, CO, in the gas mixture by comparing the measured Raman spectrum with a reference spectrum (see Col. 17, lines 6-57);

means for providing an alarm when the determined quantitative amount of the anesthetic agent degradation product in the anesthetic gas mixture exceeds a given threshold (col. 20, lines 26-46).

As to Claim 6, the patent '486 teaches a method, comprising

(a) determining the quantitative amount of at least one of the anesthetic agents degradation products, CO, in the gas mixture;

(b) providing an alarm when the determined quantitative amount of the anesthetic agent degradation product in the anesthetic gas mixture exceeds a given threshold (col. 20, lines 26-46).

As to Claim 7, the patent '486 teaches everything as applied to Claim 6, wherein step (b) comprises:

(c) measuring a Raman spectrum of the gas mixture,

(d) determining the quantitative amount of the anesthetic agent in the gas mixture by comparing the measured Raman spectrum with a reference spectrum of the anesthetic agent (see Col. 17, lines 5-57).

As to Claim 8, the patent '486 teaches use of a Raman spectrometer (Fig. 2) for determining the quantitative amount of an anesthetic agent degradation product in a gas mixture (col. 4, lines 47-68, and col. 5, lines 1-63, col. 17, lines 5-54). The anesthetic agent degradation product is CO, which is listed in Table I of the gases of interest.

As to Claim 9, the patent teaches all as applied to Claim 6, wherein the anesthetic agent product comprises carbon monoxide CO (see col. 17, Table I, lines 31-34).

As to Claim 10, the patent teaches all as applied to Claim 5, wherein the anesthetic agent product comprises carbon monoxide CO (see col. 17, Table I, lines 31-34).

Response to Arguments

Applicant's amendment, received 7/09/2004, with respect to the 35 U.S. C 112 rejection, second paragraph, of the dependent claims 4-6 overcomes the rejection. The 112 rejection of claims 4-6 has been withdrawn.

Applicant's arguments, received 7/09/2004, with respect to the 35 U.S.C. 102 (b) rejection of Claims 1-8 have been fully considered but they are not persuasive.

Claim 1. The Applicant asserts that *"the invention of Van Wagenen is directed to the identification and quantitation of anesthetic agents and respiratory gases, preferably, halothane, entlurane, and isoflurane (anesthetic agents) and carbon dioxide, oxygen, nitrous oxide and nitrogen. By contrast, the present invention relates to the identification of anesthetic agent degradation products (such as carbon monoxide and trifluoromethane)"*. The Examiner respectfully disagrees. Van Wagenen discloses in column 17 that the primary interest of the invention is "analysis of respiratory and anesthetic gases." Further down the patent lists several representative gases of interest, wherein one of the gases is CO (carbon monoxide) listed under CO₂ (carbon dioxide). The patent does not call the CO as a degradation agent, however, it clear shows that carbon monoxide is the gas of the interest. Furthermore, in column 24, lines 39-49, the patent states that the system described in the invention is useful for monitoring hazardous gases.

Therefore, Van Wagenen does teach and suggest determining means for determining the quantitative amount of an anesthetic agent degradation product in an anesthetic gas mixture, and alarm means for providing an alarm when the determined

quantitative amount of the anesthetic agent degradation product in the anesthetic gas mixture exceeds a given threshold as set forth in claim 1 of the present application.

Claim 2. The Applicant asserts "*Van Wagenen et al. does not teach or suggest a processing unit for determining the quantitative amount of the anesthetic agent degradation product in the gas mixture as set forth in claim 2.*" The Examiner respectfully disagrees. Van Wagenen teaches (see col. 17, lines 6-8) processing unit for determining the quantitative amount of the anesthetic agent in the gas mixture by comparing the measured Raman spectrum with a reference spectrum of the anesthetic agent.

Claim 3. Van Wagenen teaches a system for detection of carbon monoxide (see discussion of Claim 1).

Claim 4. The applicant alleges "*the assertion in the Office Action that CHF3 is taught inherently by Van Wagenen et al is not supported.*" That is not true. The Examiner clearly stated the reasons for the inherence and referred to an article by Kronen listed in the form PTO-892.

Claim 5. The applicant alleges "*the reasons for patentability of claim 1 can be applied mutatis mutandis to Claim 5.*" The Examiner respectfully disagrees. The reasons for non-patenability of Claim 1, as discussed above, are applied *in other words* to Claim 5.

Claim 6. The applicant alleges "*the reasons for patentability of claim 1 can be applied mutatis mutandis to Claim 6.*" The Examiner respectfully disagrees. The

reasons for non-patenability of Claim 1, as discussed above, are applied *in other words* to Claim 6.

Claim 7. The reasons for non-patenability of Claim 6, as discussed above, are applied *in other words* to Claim 7.

Claim 8. The applicant alleges "*the reasons for patentability of claim 1 can be applied mutatis mutandis to Claim 8.*" The Examiner respectfully disagrees. The reasons for non-patenability of Claim 1, as discussed above, are applied *in other words* to Claim 8.

As to the new Claims 9 and 10, see the 35 USC 102 (b) rejection above and the discussion of claims 1-8.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Papers related to this application may be submitted to Technology Center 2800 by facsimile transmission. Papers should be faxed to TC 2877 via the PTO Fax Center located in CP4-4C23. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Center number is (703) 872-9306.

If the Applicant wishes to send a Fax dealing with either a Proposed Amendment or for discussion for a phone interview then the fax should:

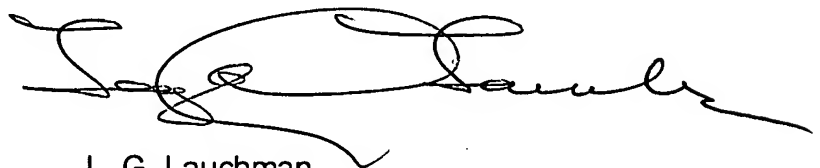
a) Contain either the statement "DRAFT" or "PROPOSED AMENDMENT" on the Fax Cover Sheet; and

b) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to L. G. Lauchman whose telephone number is (571) 272-2418. The examiner's normal work schedule is 8:00am to 4:30pm (EST), Monday through Friday. If attempts to reach examiner by the telephone are unsuccessful, the examiner's supervisor Gregory J. Toatley, Jr. can be reached on (571) 272-2059, ext. 77.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC receptionist whose telephone number is (571) 272-1562.

A handwritten signature in black ink, appearing to read 'L. G. Lauchman', with a long horizontal flourish extending to the right.

L. G. Lauchman
Patent Examiner
Art Unit 2877

October 1, 2004